

DEBORAH SALLIS,

Plaintiff,

vs.

MICHAEL KUBIK, SHERIFF, BLACK
HAWK COUNTY, IA; BLACK HAWK
COUNTY CIVIL SERVICE
COMMISSION; and TEAMSTERS
LOCAL 238;

Defendants.

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) No. C01-2022 MJM
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) **ORDER**
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If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion

or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m).

As explained in the advisory notes, the rule “explicitly provides that the court shall allow additional time if there is good cause for the plaintiff’s failure to effect service in the prescribed 120 days, *and authorizes the court to relieve a plaintiff of the consequences of an application of this subdivision even if there is no good cause shown.*” Fed. r. Civ. P. 4(m) advisory committee’s note (emphasis added).

The Eighth Circuit has similarly observed that a district court has discretion to deny a Rule 4(m) motion even where no good cause for delay has been shown:

“[U]nder Rule 4(m), if the district court concludes there is good cause for plaintiff’s failure to serve within 120 days, it *shall* extend the time for service. If plaintiff fails to show good cause, the court still *may* extend the time for service rather than dismiss the case without prejudice.”

Adams v. AlliedSignal Gen. Aviation Avionics, 74 F.3d 882, 887 (8th Cir. 1996), *quoted in Roberts v. Michaels, d/b/a Mid-South Vending*, 219 F.3d 775, 777 n.1 (8th Cir. 2000).

As noted above, service on Defendant Teamsters was ultimately obtained on September 7, 2001. Furthermore, Defendant Teamsters has not alleged any resulting prejudice from Plaintiff’s delay. Given these facts and the flexibility encouraged by

the language of the rule itself, the Court concludes that this is not a case in which dismissal under Rule 4(m) would be appropriate. Accordingly, Defendant Teamsters' motion to dismiss is Denied.

Done and so ordered this _____ day of November, 2001.

Michael J. Melloy, Judge
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA